



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 06542-99

13 September 2000

LT [REDACTED] SC USN

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Bureau of Naval Personnel dated 30 November 1999, a copy of which is attached. The Board also considered your counsel's letter dated 29 August 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice. In this connection, the Board substantially concurred with the advisory opinion.

The Board found that regardless of whether you had been informed of a "matter of interest" determination in your case, you were properly afforded an opportunity to make a statement concerning the contested civil action report; but you declined to make a statement. Contrary to the advisory opinion, they found the contested material was filed pursuant to Naval Military Personnel Manual (MILPERSMAN) 3410100, not Secretary of the Navy Instruction 5300.29 or 5300.29A, neither of which is cited anywhere in the contested material. They were unable to accept your assertion that the Chief of Naval Personnel (CNP) did not find your situation was a "matter of interest" under MILPERSMAN 3410100. On the contrary, its having been filed in your record suggests CNP did find it a "matter of interest." Finally, they found the matter was final, for purposes of MILPERSMAN 3410100, when you were convicted. They noted that you may ask NPC to add to your record documentation reflecting the later dismissal of your conviction.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

Copy to:
Mr. Stephen C. Glassman



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6342-99

1611
Ser 834C/1794
30 Nov 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: [REDACTED], SC, USN [REDACTED]

Ref: (a) BCNR memo 5420 Pers-00ZCB of 3 Nov 99
(b) Superintendent, NPS, ltr 5812 Ser 006/464 of 24 Nov 97
(c) SECNAVINST 5300.29A

Encl: (1) BCNR file 06542-99

1. Reference (a) requested comments and recommendations concerning the removal of reference (b), [REDACTED] z' civil conviction for reckless driving. Enclosure (1) is returned as a matter under the purview of BCNR.

2. By reference (b), [REDACTED] z pled *nolo contendere* to a charge of reckless driving under the California Vehicle Code section 23103.5(a) on 16 Aug 97 by the Municipal Court of Monterey (CA). [REDACTED] was originally charged with driving under the influence after colliding with a parked vehicle. In accordance with reference (c), all substantiated DUIs shall be documented via appropriate administrative record entries.

3. [REDACTED] plea and conviction meets the standard of a substantiated DUI per reference (c). Accordingly, the matter was placed in his permanent personnel record. [REDACTED] conviction was subsequently dismissed by the court using California Penal Code section 1203.4. This statute allows a person who was sentenced to probation and has fulfilled all conditions for the entire period to petition the court to withdraw his plea of guilty or *nolo contendere* to not guilty and for the court to dismiss the accusations. This is a post-judgement remedy and does not challenge the underlying factual basis. It also does not supercede the reporting requirements of reference (c). The statute section specifically states that "the order does not relieve [the petitioner] of the obligation to disclose the conviction..." As this action is consistent with applicable directives and the handling of similar cases, the removal of the matter from [REDACTED] record is not recommended.

[REDACTED]
Commander, U.S. Naval Reserve
Director, Personnel Performance &
Security Division (PERS-83)